



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,089	12/14/1999	SHMUEL SHAFFER	CIS0045US	1994
33031 7590 04/05/2007 CAMPBELL STEPHENSON ASCOLESE, LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			EXAMINER ZIA, SYED	
			ART UNIT 2131	PAPER NUMBER
			MAIL DATE 04/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/460,089

Examiner

Syed Zia

Applicant(s)

SHAFFER ET AL.

Art Unit

2131

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 4, 7, 14, 17, 27-29 and 42-44.  
Claim(s) rejected: 1, 3, 5, 6, 8-11, 13, 15, 16, 18-26, 30, 33-37, 39-41, 45, 48-52 and 54-56.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*Syed Zia*  
SYED ZIA  
PRIMARY EXAMINER  
AUG 27

***Attachment to Advisory Action***

***Response to Amendment***

This office action is in response to request for consideration, and amendment filed on March 09, 2007. Original application contained Claims 1-56. Applicant previously cancelled Claims 2, 12, and 31, 32, 38, 46, 47, and 53. Applicant previously amended Claim 1, 3-11, 13-21-30, 32-37, 39-46, 48-52, and 54-56.

Applicant currently amended Claims 21, and 54 by inserting a word "tangible" in front of "signal bearing medium", corresponding dependent claims of claim 21, and 54 also need to be amended accordingly.

The amendments filed have not been entered and not made of record. Presently pending claims are 1, 3-11, 13- 30, 33-37, 39-45, 48-52, and 54-56.

***Response to Arguments***

1. Applicant's arguments filed on March 09, 2007 regarding previous art rejection have been fully considered but they are not persuasive, please refer to previous office action dated January 4, 2007 for response.
2. Regarding Claims rejection under 35 U.S.C. 101, applicant previously argued that a "signal bearing medium" is a physical, tangible, medium and is not merely a form of energy. Examiner responded that on pp 16-17 of specification this was disclosed that example of

Art Unit: 2131

recordable medium are but not limited to: signal bearing medium which can be transmission type media such as digital and analogue communication links using either synchronous or asynchronous communication. Therefore, signal bearing medium is not tangible, hence directed to non-statutory subject matter.

Applicant in current response argued that Applicant's independent claims 21 and 54 are not directed to raw signals, and these claims, as amended to facilitate the further prosecution, includes a positive limitation of " a tangible signal bearing medium." This amendment further emphasizes that the claim is limited to a scope that includes tangible subject matter. Applicant respectfully submits that in light of the amendment, independent claim 21, and 54 and all claims dependent therefrom are clearly patentable under § 101.

However, examiner searched the disclosure and could not find this new "a tangible signal bearing medium" limitation. Therefore, examiner assert that the subject matter of Claims 21-23, and 54-56 are still directed to non-statutory subject matter

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Zia whose telephone number is 571-272-3798. The examiner can normally be reached on 9:00 to 5:00.

Art Unit: 2131

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SZ

April 2, 2007

*Syeda*  
SYEDA  
PRIMARY EXAMINER  
AYAZ